

Introduced by Senator Kuehl

February 22, 2005

~~An act to amend Section 2207, 2715, 2761, and 2763 of, to add Section 2731.5 to, and to repeal and add Section 2731 of, the Public Resources Code, and to amend Section 10295.5 of, and to repeal and add Section 20676 of, the Public Contracts Code, relating to mining.~~
An act to amend Section 10295.5 of, and to repeal and add Section 20676 of, the Public Contract Code, and to amend Sections 2207, 2714, 2715, 2716, 2728, 2761, 2763, 2770, 2773.1, 2774, 2774.1, and 2775 of, to add Sections 2731.5, 2772.7, and 2772.8 to, and to repeal and add Sections 2731 and 2773.2 of, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 668, as amended, Kuehl. Mining.

(1) Existing law requires the owner, lessor, lessee, agent, manager, or other person in charge of a mining operation to annually submit certain information in a report to the Director of Conservation, and to submit specified reporting fees to the State Mining and Geology Board. Existing law defines the term "mining operation" for purposes of these requirements, as a surface mine.

This bill would revise the definition of "mining operation" for purposes of these requirements to include any mining operation, including, but not limited to, a mining operation that is classified as a surface mine, and would impose those requirements upon the owner or operator of, ~~or the owner of a mineral interest, as defined, in such a~~ mining operation.

The bill would additionally require the report to include a written acknowledgment that the owner is aware of, and approves of, any reclamation plan the operator of the mining operation on the property has proposed for, or has obtained approval of *with respect to*, for the property, as specified.

(2) Existing law, the Surface Mining and Reclamation Act of 1975, governs surface mining operations and reclamation of mined lands. The act prohibits a person from conducting surface mining operations without obtaining a permit from the lead agency for those operations, and submitting and receiving approval for a reclamation plan and financial assurances from the lead agency. Existing law defines the term “operator” for ~~purpose~~ *purposes* of that act. The act provides that it does not limit, among other things, the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space and other purposes.

This bill would revise the definition of the term “operator” and would additionally define the term “*mineral* owner” for ~~purpose~~ *purposes* of the act. The bill would provide that the exemption of the act upon a city or county’s power does not apply to land designated as an area of regional significance or an area of statewide significance, as defined.

(3) The act requires the State Geologist to classify certain areas identified by the Office of Planning and Research, as areas containing little or no mineral deposits, or significant mineral deposits, or requiring further evaluation.

This bill would instead require the State Geologist to classify those areas that do not require further evaluation as an area that contains ~~deposits of minerals~~ *mineral deposits* and that is not of regional or statewide significance, or an area that contains mineral deposits and that is either of regional or statewide significance.

(4) Existing law requires a lead agency, before permitting a use that would threaten the potential to extract minerals in specified areas, to prepare a specified statement if the area is designated by the State Mining and Geology Board as an area of regional or statewide significance, and the lead agency either has designated that area in its general plan as having important minerals or otherwise has not yet acted, as specified.

This bill would additionally prohibit a city or county, in any area ~~designated~~ *classified* by the State Geologist or *designated by* the board as an area that contains mineral deposits and is an area of regional or

statewide significance, in either its general plan, or in its resource management plan, ~~to allow from allowing~~ the area to be used for, or ~~permit permitting~~ a use, that is inconsistent with the exploitation or development of that area for mineral excavation and production, until commercial production of the area so designated is completed. The bill would allow the city or county to permit part of the area to be utilized for a use not involving mineral exploitation or development, under specified circumstances.

(5) Existing law requires the Department of Conservation, for purposes of complying with certain provisions regarding public contracts, to publish or otherwise make available, upon request, to the Department of General Services or a state agency, a list identifying certain surface mining operations. Existing law prohibits an operator of surface mines in this state, whose operations are not identified in that list, from selling California mined material to a local agency.

This bill would also prohibit a local agency from contracting with a person utilizing these materials, as specified.

This bill would instead prohibit a contractor or a mining operator from selling any minerals to a local agency unless the contractor or mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list.

Since this certification would be under penalty ~~or~~ of perjury, the bill would impose a state-mandated local program by creating a new crime.

(6) The bill would make other changes with respect to mining and reclamation activities, including revising provisions relating to the review of, and appeals concerning reclamation plans and financial assurances for mining operations.

~~(6)~~

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 10295.5 of the Public Contract Code is*
2 *amended to read:*

3 10295.5. (a) Notwithstanding any other provision of law, no
4 state agency shall acquire or utilize sand, gravel, aggregates, or
5 other minerals produced from a surface mining operation subject
6 to the Surface Mining and Reclamation Act of 1975 (Chapter 9
7 (commencing with Section 2710) of Division 2 of the Public
8 Resources Code), *or contract with a person who is not a surface*
9 *mining operator, but who is supplying or utilizing those mined*
10 *materials, to perform work for or supply materials to a state*
11 *agency, unless the operation is identified in the list published*
12 *pursuant to subdivision (b) of Section 2717 of the Public*
13 *Resources Code as having either of the following:*

14 (1) An approved reclamation plan and financial assurances
15 covering the affected surface mining operation.

16 (2) An appeal pending before the State Mining and Geology
17 Board pursuant to subdivision (e) of Section 2770 of the Public
18 Resources Code with respect to the reclamation plan or financial
19 assurances.

20 ~~(b) The department shall revise its procedures and~~
21 ~~specifications for the acquisition of sand, gravel, aggregates, and~~
22 ~~other minerals to ensure maximum compliance with this section.~~

23 ~~(1) The owner or operator of a mining operation and the owner~~
24 ~~of a mineral interest in a mining operation shall forward a report~~
25 ~~to the Director of Conservation annually, not later than a date~~
26 ~~established by the director, upon a form furnished or approved~~
27 ~~by the State Mining and Geology Board from time to time, that~~
28 ~~includes a written acknowledgment by the owner of the fee on~~
29 ~~which the mining operation is located, and the owner of the~~
30 ~~mineral interest in the property if other than the fee owner or~~
31 ~~operator, that the owner is aware of, and approves of, any~~
32 ~~reclamation plan the operator of the mining operation on the~~
33 ~~property has proposed for, or has obtained approval of with~~
34 ~~respect to, the property, and agrees that if the operator defaults~~
35 ~~under its reclamation obligations of that reclamation plan, the~~
36 ~~owner is responsible for completing reclamation of the property~~
37 ~~in accordance with that reclamation plan.~~

1 (2) The approval of a form by the State Mining and Geology
2 Board pursuant to this subdivision is not the adoption of a
3 regulation for purposes of Chapter 3.5 (commencing with Section
4 11340) of Part 1 of Division 3 of Title 2 of the Government Code
5 and is not subject to that chapter.

6 (3) For purposes of paragraph (1), “mining operation” has
7 the same meaning as defined in subdivision (g) of Section 2207 of
8 the Public Resources Code.

9 (c) For purposes of this section, “minerals” means any
10 naturally occurring chemical element or compound, or groups of
11 elements and compounds, formed from inorganic processes and
12 organic substances, including, but not limited to, coal, peat, and
13 bituminous rock, but excluding geothermal resources, natural
14 gas, and petroleum.

15 ~~(d) The requirements of this section shall apply to mining~~
16 ~~operations on federal lands or Indian lands that are subject to the~~
17 ~~Surface Mining and Reclamation Act of 1975 (Chapter 9~~
18 ~~(commencing with Section 2710) of Division 2 of the Public~~
19 ~~Resources Code) pursuant to a memorandum of understanding~~
20 ~~between the Department of Conservation and the federal agency~~
21 ~~having jurisdiction over the lands.~~

22 SEC. 2. Section 20676 of the Public Contract Code is
23 repealed.

24 ~~20676. Operators of surface mines in this state, whose~~
25 ~~operations are not identified in the list published pursuant to~~
26 ~~subdivision (b) of Section 2717 of the Public Resources Code,~~
27 ~~may not sell that California mined material to a local agency.~~

28 SEC. 3. Section 20676 is added to the Public Contract Code,
29 to read:

30 20676. A contractor or a mining operator shall not sell any
31 minerals, as defined in subdivision (c) of Section 10295.5, to a
32 local agency, unless the contractor or mining operator certifies,
33 under penalty of perjury, that the minerals are from a mining
34 operation identified in the list published pursuant to subdivision
35 (b) of Section 2717 of the Public Resources Code.

36 SECTION 4.

37 SEC. 4. Section 2207 of the Public Resources Code is
38 amended to read:

39 2207. (a) The owner or the operator of a mining operation
40 within the state, ~~or the owner of a mineral interest in a mining~~

~~operation within the state~~, shall forward to the director annually not later than a date established by the director, upon forms approved by the board from time to time, a report, subject to subdivision (i), that identifies all of the following:

(1) The name, address, and telephone number of the person, company, or other owner of the mining operation.

(2) The name, address, and telephone number of a designated agent who resides in this state, and who will receive and accept service of all orders, notices, and processes of the lead agency, board, director, or court.

(3) The location of the mining operation, its name, its mine number as issued by the Bureau of Mines or the director, its section, township, range, latitude, longitude, and approximate boundaries of the mining operation marked on a United States Geological Survey 7½-minute or 15-minute quadrangle map.

(4) The lead agency.

(5) The approval date of the mining operation's reclamation plan.

(6) The mining operation's status as active, idle, reclaimed, or in the process of being reclaimed.

(7) The commodities produced by the mine and the type of mining operation.

(8) Proof of annual inspection by the lead agency.

(9) Proof of financial assurances.

(10) Ownership of the property, including government agencies, if applicable, by the assessor's parcel number, and total assessed value of the mining operation.

(11) The approximate permitted size of the mining operation subject to Chapter 9 (commencing with Section 2710), in acres.

(12) The approximate total acreage of land newly disturbed by the mining operation during the previous calendar year.

(13) The approximate total of disturbed acreage reclaimed during the previous calendar year.

(14) The approximate total unreclaimed disturbed acreage remaining as of the end of the calendar year.

(15) The total production for each mineral commodity produced during the previous year.

(16) A copy of any approved reclamation plan and any amendments or conditions of approval to any existing reclamation plan approved by the lead agency.

1 ~~(17) A written acknowledgment by the owner of the fee on~~
2 ~~which the mining operation is located, and the owner of the~~
3 ~~mineral interest in the property, if other than the fee owner or~~
4 ~~operator, that the owner is aware of, and approves of, any~~
5 ~~reclamation plan the operator of the mining operation on the~~
6 ~~property has proposed for, or has obtained approval of, for the~~
7 ~~property, and agrees that if the operator defaults under its~~
8 ~~reclamation obligations of that reclamation plan, the owner is~~
9 ~~subject to both of the following:~~

10 ~~(A) The owner is responsible for completing reclamation of~~
11 ~~the property in accordance with the provisions of that~~
12 ~~reclamation plan.~~

13 ~~(B) The owner shall allow access to the property to any~~
14 ~~governmental agency or the agent of any company providing~~
15 ~~financial assurances in connection with the reclamation plan, in~~
16 ~~order that reclamation can be carried out by the entity or~~
17 ~~company, in accordance with the provisions of the reclamation~~
18 ~~plan.~~

19 (b) Every year, not later than the date established by the
20 director, the person submitting the report pursuant to subdivision
21 (a) shall forward to the lead agency, upon forms furnished by the
22 board, a report that provides all of the information specified in
23 paragraphs (1) to ~~(17)~~ (16), inclusive, of subdivision (a).

24 (c) Subsequent reports shall include only changes in the
25 information submitted for the items described in subdivision (a),
26 except that, instead of the approved reclamation plan, the reports
27 shall include any reclamation plan amendments approved during
28 the previous year. The reports shall state whether review of a
29 reclamation plan, financial assurances, or an interim management
30 plan is pending under subdivision (b), (c), (d), or (h) of Section
31 2770, or whether an appeal before the board or lead agency
32 governing body is pending under subdivision (e) or (h) of Section
33 2770. The director shall notify the person submitting the report
34 and the owner's designated agent in writing that the report and
35 the fee required pursuant to subdivision (d) have been received,
36 specify the mining operation's mine number if one has not been
37 issued by the Bureau of Mines, and notify the person and agent
38 of any deficiencies in the report within 90 days of receipt. That
39 person or agent shall have 30 days from receipt of the
40 notification to correct the noted deficiencies and forward the

1 revised reports to the director and the lead agency. Any person
2 who fails to comply with this section, or knowingly provides
3 incorrect or false information in reports required by this section,
4 may be subject to an administrative penalty as provided in
5 subdivision (c) of Section 2774.1.

6 (d) (1) The board shall impose, by regulation, pursuant to
7 paragraph (2), an annual reporting fee on, and method for
8 collecting annual fees from, each active or idle mining operation.
9 The maximum fee for any single mining operation may not
10 exceed four thousand dollars (\$4,000) annually and may not be
11 less than one hundred dollars (\$100) annually, as adjusted for the
12 cost of living as measured by the California Consumer Price
13 Index for all urban consumers, calendar year averages, using the
14 percentage change in the previous year, beginning with the
15 2005–06 fiscal year and annually thereafter.

16 (2) (A) The board shall adopt, by regulation, a schedule of
17 fees authorized under paragraph (1) to cover the department's
18 cost in carrying out this section and Chapter 9 (commencing with
19 Section 2710), as reflected in the Governor's Budget, and may
20 adopt those regulations as emergency regulations. In establishing
21 the schedule of fees to be paid by each active and idle mining
22 operation, the fees shall be calculated on an equitable basis
23 reflecting the size and type of operation. The board shall also
24 consider the total assessed value of the mining operation, the
25 acreage disturbed by mining activities, and the acreage subject to
26 the reclamation plan.

27 (B) Regulations adopted pursuant to this subdivision shall be
28 adopted by the board in accordance with Chapter 3.5
29 (commencing with Section 11340) of Part 1 of Division 3 of Title
30 2 of the Government Code. The adoption of any emergency
31 regulations pursuant to this subdivision shall be considered
32 necessary to address an emergency and shall be considered by
33 the Office of Administrative Law to be necessary for the
34 immediate preservation of the public peace, health, safety, and
35 general welfare.

36 (3) The total revenue generated by the reporting fees may not
37 exceed, and may be less than, the amount of three million five
38 hundred thousand dollars (\$3,500,000), as adjusted for the cost of
39 living as measured by the California Consumer Price Index for
40 all urban consumers, calendar year averages, using the

percentage change in the previous year, beginning with the 2005–06 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Sections 2796.5 and 2797.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 1 ½ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation’s anniversary month.

(e) The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover

1 the reasonable costs incurred in implementing this chapter and
2 Chapter 9 (commencing with Section 2710).

3 ~~(f) For purposes of this section, “mineral interest” means a~~
4 ~~legal interest in the minerals, as defined in Section 2005, that are~~
5 ~~on the surface of or under the surface of the land of the mining~~
6 ~~operation.~~

7 ~~(g)–~~

8 (f) For purposes of this section, “mining operation” means a
9 mining operation of any kind or character whatever in this state,
10 including, but not limited to, a mining operation that is classified
11 as a “surface mining operation” as defined in Section 2735,
12 *unless excepted by Section 2714*. For the purposes of fee
13 collections only, “mining operation” may include one or more
14 mines operated by a single operator or mining company on one
15 or more sites, if the total annual combined mineral production for
16 all sites is less than 100 troy ounces for precious metals, if
17 precious metals are the primary mineral commodity produced, or
18 less than 100,000 short tons if the primary mineral commodity
19 produced is not precious metals.

20 (h) Any information in reports submitted pursuant to
21 subdivision (a) that includes or otherwise indicates the total
22 mineral production, reserves, or rate of depletion of any mining
23 operation may not be disclosed to any member of the public, as
24 defined in subdivision (b) of Section 6252 of the Government
25 Code. Other portions of the reports are public records unless
26 excepted by statute. Statistical bulletins based on these reports
27 and published under Section 2205 shall be compiled to show, for
28 the state as a whole and separately for each lead agency, the total
29 of each mineral produced therein. In order not to disclose the
30 production, reserves, or rate of depletion from any identifiable
31 mining operation, no production figure shall be published or
32 otherwise disclosed unless that figure is the aggregated
33 production of not less than three mining operations. If the
34 production figure for any lead agency would disclose the
35 production, reserves, or rate of depletion of less than three
36 mining operations or otherwise permit the reasonable inference
37 of the production, reserves, or rate of depletion of any
38 identifiable mining operation, that figure shall be combined with
39 the same figure of not less than two other lead agencies without
40 regard to the location of the lead agencies. The bulletin shall be

published annually by June 30 or as soon thereafter as practicable.

(i) The approval of a form by the board pursuant to this section is not the adoption of a regulation for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and is not subject to that chapter.

SEC. 5. Section 2714 of the Public Resources Code is amended to read:

2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or ~~onsite construction or for the purpose of restoring land following a flood or natural disaster~~ *the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.*

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project *and* that are undertaken to prepare a site for construction of structures, ~~landscaping, or other land improvements or landscaping associated with those structures~~, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).

(2) The lead agency's approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(3) None of the minerals being processed are being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes ~~and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less~~ *where the removal of overburden or mineral product totals less than 1000 cubic yards in any one location, and the total surface area disturbed is less than one acre in extent.*

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased,

1 or upon which easements or rights-of-way have been obtained,
2 by the Reclamation Board for the purpose of flood control, if the
3 Department of Water Resources adopts, after submission to and
4 consultation with, the Department of Conservation, a reclamation
5 plan for lands affected by these activities, and those lands are
6 reclaimed in conformance with the standards specified in
7 regulations of the board adopted pursuant to this chapter. The
8 Department of Water Resources shall provide an annual report to
9 the Department of Conservation by the date specified by the
10 Department of Conservation on these mining activities.

11 (2) Nothing in this subdivision shall require the Department of
12 Water Resources or the Reclamation Board to obtain a permit or
13 secure approval of a reclamation plan from any city or county in
14 order to conduct surface mining operations specified in
15 paragraph (1). Nothing in this subdivision shall preclude the
16 bringing of an enforcement action pursuant to Section 2774.1, if
17 it is determined that a surface mine operator, acting under
18 contract with the Department of Water Resources or the
19 Reclamation Board on lands other than those owned or leased, or
20 upon which easements or rights-of-way have been obtained, by
21 the Department of Water Resources or the Reclamation Board, is
22 otherwise not in compliance with this chapter.

23 (j) (1) Excavations or grading for the exclusive purpose of
24 obtaining materials for roadbed construction and maintenance
25 conducted in connection with timber operations or forest
26 management on land owned by the same person or entity. This
27 exemption is limited to excavation and grading that is conducted
28 adjacent to timber operation or forest management roads and
29 shall not apply to onsite excavation or grading that occurs within
30 100 feet of a Class One watercourse or 75 feet of a Class Two
31 watercourse, or to excavation for materials that are, or have been,
32 sold for commercial purposes.

33 (2) This exemption shall be available only if slope stability
34 and erosion are controlled in accordance with subdivision (f) of
35 Section 3704 and subdivision (d) of Section 3706 of Title 14 of
36 the California Code of Regulations and, upon closure of the site,
37 the person closing the site implements, where necessary,
38 revegetation measures and postclosure uses in consultation with
39 the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

~~SEC. 2.~~

SEC. 6. Section 2715 of the Public Resources Code is amended to read:

2715. No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his *or her* own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.

(f) (1) Except as provided in paragraph (2), on the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.

(2) Paragraph (1) does not apply to land designated as an area of regional significance or an area of statewide significance, as defined in Section 2726 or 2727, respectively.

SEC. 7. Section 2716 of the Public Resources Code is amended to read:

2716. (a) Any *interested* person may commence an action on his or her own behalf against the board, the State Geologist, or the director for a writ of mandate pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure to compel the board, the State Geologist, or the director to carry out any duty imposed upon them pursuant to this chapter.

(b) *For purposes of this section, “person” means an individual, firm, association, corporation, organization, or partnership, or a city, county, district, or the state or any department or agency of the state.*

SEC. 8. Section 2728 of the Public Resources Code is amended to read:

2728. “Lead agency” means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a ~~surface mining operation or~~ reclamation plan pursuant to this chapter.

SEC. 9. Section 2729.5 is added to the Public Resources Code, to read:

2729.5. (a) “Mineral owner” means the owner of some or all of the mineral estate in the property on which the mining operation is located.

(b) “Mineral owner” includes the owner of some or all of the surface estate in the property, but only to the extent that the surface owner also owns some or all of the mineral estate in the property, and does not include the federal government or an agency of the federal government.

(c) *It that the mineral estate is divided between more than one owner on the basis of ownership in specified minerals, then “mineral owner” refers only to the owner or owners who have an ownership interest in the specified mineral that was the subject of the breach of reclamation plan described in subdivision (c) of Section 2731.*

1 ~~SEC. 3.~~

2 ~~SEC. 10.~~ Section 2731 of the Public Resources Code is
3 repealed.

4 ~~SEC. 4.~~

5 ~~SEC. 11.~~ Section 2731 is added to the Public Resources Code,
6 to read:

7 2731. (a) “Operator” means a person or entity performing the
8 primary mining activity on the mined lands.

9 (b) “Operator” includes both of the following:

10 (1) A person or entity excavating or processing ore or minerals
11 on or taken from the mined lands, whether done directly or under
12 a contract with a third party.

13 (2) The direct or indirect parent company of the operator.

14 ~~(c) If an operator defaults in its obligations to reclaim the~~
15 ~~mined lands, as set forth in any applicable reclamation plan, the~~
16 ~~owner of the fee and the owner of the mineral interests, if~~
17 ~~separate from the owner of the fee, shall succeed to all the~~
18 ~~obligations of the operator to complete the reclamation of the~~
19 ~~mined lands, and under those conditions, the owner shall be~~
20 ~~considered an “operator” for purposes of this chapter.~~

21 ~~(c) If an operator defaults in its obligations to reclaim the~~
22 ~~mined lands, as set forth in any applicable reclamation plan, the~~
23 ~~mineral owner shall succeed to all the obligations of the operator~~
24 ~~to complete the reclamation of the mined lands, and under those~~
25 ~~conditions, the mineral owner shall be considered an “operator”~~
26 ~~for purposes of this chapter. A mineral owner shall not succeed~~
27 ~~to any obligation of an operator if the operator is mining the~~
28 ~~land pursuant to a lease or other agreement with the mineral~~
29 ~~owner executed prior to January 1, 2006. However, an extension~~
30 ~~or renewal of any such lease or agreement shall obligate the~~
31 ~~mineral owner to reclaim the mined lands upon the default of the~~
32 ~~operator, to the extent that the operator conducted mining~~
33 ~~operations on those lands after March 31, 2005.~~

34 ~~SEC. 5.~~ Section 2731.5 is added to the Public Resources
35 Code, to read:

36 ~~2731.5. “Owner” means both of the following:~~

37 ~~(a) The fee owner of the mined lands.~~

38 ~~(b) The owner of the mineral interests in the mined lands if the~~
39 ~~interest is separated from ownership of the fee, unless the fee~~
40 ~~interest is owned by a governmental agency.~~

1 ~~SEC. 6.~~

2 *SEC. 12.* Section 2761 of the Public Resources Code is
3 amended to read:

4 2761. (a) On or before January 1, 1977, and, as a minimum,
5 after the completion of each decennial census, the Office of
6 Planning and Research shall identify portions of the following
7 areas within the state that are urbanized or are subject to urban
8 expansion or other irreversible land uses that would preclude
9 mineral extraction:

10 (1) Standard metropolitan statistical areas and other areas for
11 which information is readily available.

12 (2) Other areas as may be requested by the board.

13 (b) In accordance with a time schedule, and based upon
14 guidelines adopted by the board, the State Geologist shall
15 classify, on the basis solely of geologic factors, and without
16 regard to existing land use and land ownership, the areas
17 identified by the Office of Planning and Research, any area for
18 which classification has been requested by a petition which has
19 been accepted by the board, or any other areas as may be
20 specified by the board, as one of the following:

21 (1) An area that contains ~~deposits of minerals and that~~
22 *mineral deposits* and is not of regional or statewide significance.

23 (2) An area that contains mineral deposits and ~~this~~ is either of
24 regional or statewide significance.

25 (3) Areas containing mineral deposits, the significance of
26 which requires further evaluation.

27 (c) The State Geologist shall require the petitioner to pay the
28 reasonable costs of classifying an area for which classification
29 has been requested by the petitioner.

30 (d) The State Geologist shall transmit the information to the
31 board for incorporation into the state policy and for transmittal to
32 lead agencies.

33 ~~SEC. 7.~~

34 *SEC. 13.* Section 2763 of the Public Resources Code is
35 amended to read:

36 2763. (a) If an area is designated by the board as an area of
37 regional significance, and the lead agency either has designated
38 that area in its general plan as having important minerals to be
39 protected pursuant to subdivision (a) of Section 2762, or
40 otherwise has not yet acted pursuant to subdivision (a) of Section

1 2762, then prior to permitting a use that would threaten the
2 potential to extract minerals in that area, the lead agency shall
3 prepare a statement specifying its reasons for permitting the
4 proposed use, in accordance with subdivision (d) of Section
5 2762. Lead agency land use decisions involving areas designated
6 as being of regional significance shall be in accordance with the
7 lead agency's mineral resource management policies and shall
8 also, in balancing mineral values against alternative land uses,
9 consider the importance of these minerals to their market region
10 as a whole and not just their importance to the lead agency's area
11 of jurisdiction.

12 (b) If an area is designated by the board as an area of statewide
13 significance, and the lead agency either has designated that area
14 in its general plan as having important minerals to be protected
15 pursuant to subdivision (a) of Section 2762, or otherwise has not
16 yet acted pursuant to subdivision (a) of Section 2762, then prior
17 to permitting a use which would threaten the potential to extract
18 minerals in that area, the lead agency shall prepare a statement
19 specifying its reasons for permitting the proposed use, in
20 accordance with subdivision (d) of Section 2762. Lead agency
21 land use decisions involving areas designated as being of
22 statewide significance shall be in accordance with the lead
23 agency's mineral resource management policies and shall also, in
24 balancing mineral values against alternative land uses, consider
25 the importance of the mineral resources to the state and nation as
26 a whole.

27 (c) If an area is ~~designated~~ *classified* by the State Geologist or
28 *designated by* the board as an area that contains mineral deposits
29 and is an area of regional or statewide significance, a city or
30 county shall not, in either its general plan, or in its resource
31 management plan, allow the area to be used for, or permit a use,
32 that is inconsistent with the exploitation or development of that
33 area for mineral excavation and production, until commercial
34 production of that area is completed, *except for uses that would*
35 *not limit or prohibit mineral exploitation or development in that*
36 *area in the future.* If exploitation or development is completed on
37 a part of that area, and that part has been reclaimed pursuant to
38 its approved reclamation plan, the city or county may allow that
39 part to be utilized for a use not involving mineral exploitation or

development, if mineral exploitation or development is allowed on the remainder of the designated area.

SEC. 8. ~~Section 10295.5 of the Public Contract Code is amended to read:~~

~~10295.5. (a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as having either of the following:~~

~~(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.~~

~~(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.~~

~~(b) (1) The owner or operator of a mining operation, and the owner of a mineral interest in a mining operation, shall forward a report to the Director of Conservation annually, not later than a date established by the director, upon forms furnished approved by the State Mining and Geology Board from time to time, that includes a written acknowledgment by the owner of the fee on which the mining operation is located, and the owner of the mineral interest in the property if other than the fee owner or operator, that the owner is aware of, and approves of, any reclamation plan the operator of the mining operation on the property has proposed for or has obtained approval of for the property, and agrees that if the operator defaults under its reclamation obligations of that reclamation plan, the owner is subject to both of the following:~~

~~(A) The owner is responsible for completing reclamation of the property in accordance with the provisions of that reclamation plan.~~

~~(B) The owner shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan, in order that reclamation can be carried out by the entity or~~

1 company, in accordance with the provisions of the reclamation
2 plan.

3 (2) The approval of a form by the State Mining and Geology
4 Board pursuant to this subdivision is not the adoption of a
5 regulation for purposes of Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code
7 and is not subject to that chapter.

8 (3) For purposes of paragraph (1), “mining operation” has the
9 same meaning as defined in subdivision (g) of Section 2207 of
10 the Public Resources Code.

11 (e) For purposes of this section, “minerals” means any
12 naturally occurring chemical element or compound, or groups of
13 elements and compounds, formed from inorganic processes and
14 organic substances, including, but not limited to, coal, peat, and
15 bituminous rock, but excluding geothermal resources, natural
16 gas, and petroleum.

17 (d) The requirements of this section shall apply to mining
18 operations on federal lands or Indian lands that are subject to the
19 Surface Mining and Reclamation Act of 1975 (Chapter 9
20 (commencing with Section 2710) of Division 2 of the Public
21 Resources Code) pursuant to a memorandum of understanding
22 between the Department of Conservation and the federal agency
23 having jurisdiction over the lands.

24 SEC. 9. Section 20676 of the Public Contract Code is
25 repealed.

26 SEC. 10. Section 20676 is added to the Public Contract Code,
27 to read:

28 20676. A contractor or a mining operator shall not sell any
29 minerals, as defined in subdivision (e) of Section 10295.5, to a
30 local agency, unless the contractor or mining operator certifies,
31 under penalty of perjury, that the minerals are from a mining
32 operation identified in the list published pursuant to subdivision
33 (b) of Section 2717 of the Public Resources Code.

34 SEC. 14. Section 2770 of the Public Resources Code is
35 amended to read:

36 2770. (a) Except as provided in this section, no person shall
37 conduct surface mining operations unless a permit is obtained
38 from, a reclamation plan has been submitted to and approved by,
39 and financial assurances for reclamation have been approved by,
40 the lead agency for the operation pursuant to this article.

1 (b) Any person with an existing surface mining operation who
2 has vested rights pursuant to Section 2776 and who does not have
3 an approved reclamation plan shall submit a reclamation plan to
4 the lead agency not later than March 31, 1988. If a reclamation
5 plan application is not on file by March 31, 1988, the
6 continuation of the surface mining operation is prohibited until a
7 reclamation plan is submitted to the lead agency. ~~For purposes of~~
8 ~~this subdivision, reclamation plans may consist of all or the~~
9 ~~appropriate sections of any plans or written agreements~~
10 ~~previously approved by the lead agency or another agency,~~
11 ~~together with any additional documents needed to substantially~~
12 ~~meet the requirements of Sections 2772 and 2773 and the lead~~
13 ~~agency surface mining ordinance adopted pursuant to subdivision~~
14 ~~(a) of Section 2774, provided that all documents which together~~
15 ~~were proposed to serve as the reclamation plan are submitted for~~
16 ~~approval to the lead agency in accordance with this chapter.~~

17 (c) If a person with an existing surface mining operation has
18 received lead agency approval of its financial assurances for
19 reclamation prior to January 1, 1991, the lead agency shall
20 administratively review those existing financial assurances in
21 accordance with subdivision (d) prior to January 1, 1992. The
22 review of existing financial assurances shall not be considered a
23 project for purposes of Division 13 (commencing with Section
24 21000). Any person with an existing surface mining operation
25 which does not have financial assurances that received lead
26 agency approval prior to January 1, 1991, shall submit financial
27 assurances for reclamation for review in accordance with
28 subdivision (d).

29 ~~(d) The lead agency's review of reclamation plans submitted~~
30 ~~pursuant to subdivision (b) or of financial assurances pursuant to~~
31 ~~subdivision (c) is limited to whether the plan or the financial~~
32 ~~assurances substantially meet the applicable requirements of~~
33 ~~Sections 2772, 2773, and 2773.1, and the lead agency surface~~
34 ~~mining ordinance adopted pursuant to subdivision (a) of Section~~
35 ~~2774, but, in any event, the lead agency shall require that~~
36 ~~financial assurances for reclamation be sufficient to perform~~
37 ~~reclamation of lands remaining disturbed. Reclamation plans or~~
38 ~~financial assurances determined to substantially meet these~~
39 ~~requirements shall be approved by the lead agency for purposes~~
40 ~~of this chapter. Reclamation plans or financial assurances~~

~~1 determined not to substantially meet these requirements shall be
2 returned to the operator within 60 days. The operator has 60 days
3 to revise the plan or financial assurances to address identified
4 deficiencies, at which time the revised plan or financial
5 assurances shall be returned to the lead agency for review and
6 approval. Except as specified in subdivision (e) or (i), unless the
7 operator has filed on or before July 1, 1990, an appeal pursuant
8 to subdivision (e) with regard to nonapproval of the reclamation
9 plan, or has filed on or before January 1, 1994, an appeal
10 pursuant to subdivision (e) with regard to nonapproval of
11 financial assurances, and that appeal is pending before the board,
12 the continuation of the surface mining operation is prohibited
13 until a reclamation plan and financial assurances for reclamation
14 are approved by the lead agency.~~

~~15 (e) Any person who, based on the evidence of the record, can
16 substantiate that a lead agency has either (1) failed to act
17 according to due process or has relied on considerations not
18 related to the specific applicable requirements of Sections 2772,
19 2773, and 2773.1, and the lead agency surface mining ordinance
20 adopted pursuant to subdivision (a) of Section 2774, in reaching
21 a decision to deny approval of a reclamation plan or financial
22 assurances for reclamation, (2) failed to act within a reasonable
23 time of receipt of a completed application, or (3) failed to review
24 and approve reclamation plans or financial assurances as required
25 by subdivisions (e) and (d), may appeal that action or inaction to
26 the board.~~

~~27 (d) The lead agency's review of a reclamation plan or
28 financial assurance shall be limited to whether the reclamation
29 plan or financial assurance meets the requirements of this
30 chapter and the state regulations adopted by the board pursuant
31 to this chapter.~~

~~32 (e) Any affected mine operator may file an appeal with the
33 board, other than in cases where the board is a lead agency, if he
34 or she alleges that the lead agency has failed to act, or has acted
35 in violation of this chapter and the state's policies adopted by the
36 board in approving or failing to approve a reclamation plan or
37 financial assurance. Any appeal shall be made within 30 days of
38 an approval or disapproval of a reclamation plan or financial
39 assurance by the lead agency, or if the allegation is that the local
40 lead agency has failed to act on a request for approval of a~~

1 *reclamation plan or financial assurance, within 180 days from*
2 *the date a complete application for the approval was filed with*
3 *the local lead agency.*

4 (f)The board may decline to hear an appeal if it determines that
5 the appeal raises no substantial issues related to the lead agency's
6 review pursuant to this section.

7 ~~(g) Appeals that the board does not decline to hear shall be~~
8 ~~scheduled and heard at a public hearing within 45 days of the~~
9 ~~filing of the appeal, or any longer period as may be mutually~~
10 ~~agreed upon by the board and the person filing the appeal. In~~
11 ~~hearing an appeal, the board shall only determine whether the~~
12 ~~reclamation plan or the financial assurances substantially meet~~
13 ~~the applicable requirements of Sections 2772, 2773, 2773.1, and~~
14 ~~the lead agency surface mining ordinance adopted pursuant to~~
15 ~~subdivision (a) of Section 2774. A reclamation plan or financial~~
16 ~~assurances determined to meet these requirements shall be~~
17 ~~approved. A reclamation plan or financial assurances determined~~
18 ~~not to meet these requirements shall be returned to the person~~
19 ~~filing the appeal with a notice of deficiencies, who shall be~~
20 ~~granted, once only, a period of 30 days, or a longer period~~
21 ~~mutually agreed upon by the operator and the board, to correct~~
22 ~~the noted deficiencies and submit the revised reclamation plan or~~
23 ~~the revised financial assurances to the lead agency for review and~~
24 ~~approval.~~

25 (g) *Appeals that the board accepts for hearing shall be*
26 *scheduled for a public hearing within 180 days of the filing of the*
27 *appeal. In hearing an appeal, the board shall require the*
28 *appellant to provide a record of the proceedings, if any, before*
29 *the local lead agency, relating to the issues for which an appeal*
30 *is sought. Any documents prepared by the local lead agency*
31 *pursuant to Division 13 (commencing with Section 21000) shall*
32 *be part of the record on appeal. Upon completion of any hearing,*
33 *the board may affirm the local lead agency's decision, remand*
34 *the matter for the further consideration by the lead agency*
35 *consistent with any conditions imposed by the board on the*
36 *remand, or reverse the local lead agency's decision. The board's*
37 *decision shall be final and not subject to appeal.*

38 (h) (1) Within 90 days of a surface mining operation
39 becoming idle, as defined in Section 2727.1, the operator shall
40 submit to the lead agency for review and approval, an interim

1 management plan. The review and approval of an interim
2 management plan shall not be considered a project for purposes
3 of Division 13 (commencing with Section 21000). The approved
4 interim management plan shall be considered an amendment to
5 the surface mining operation's approved reclamation plan, for
6 purposes of this chapter. The interim management plan shall
7 provide measures the operator will implement to maintain the site
8 in compliance with this chapter, including, but not limited to, all
9 permit conditions.

10 (2) The interim management plan may remain in effect for a
11 period not to exceed five years, at which time the lead agency
12 shall do one of the following:

13 (A) Renew the interim management plan for another period
14 not to exceed five years, if the lead agency finds that the surface
15 mining operator has complied fully with the interim management
16 plan.

17 (B) Require the surface mining operator to commence
18 reclamation in accordance with its approved reclamation plan.

19 (3) The financial assurances required by Section 2773.1 shall
20 remain in effect during the period that the surface mining
21 operation is idle. If the surface mining operation is still idle after
22 the expiration of its interim management plan, the surface mining
23 operation shall commence reclamation in accordance with its
24 approved reclamation plan.

25 (4) Within 60 days of the receipt of the interim management
26 plan, or a longer period mutually agreed upon by the lead agency
27 and the operator, the lead agency shall review and approve the
28 plan in accordance with its ordinance adopted pursuant to
29 subdivision (a) of Section 2774, so long as the plan satisfies the
30 requirements of this subdivision, and so notify the operator in
31 writing. Otherwise, the lead agency shall notify the operator in
32 writing of any deficiencies in the plan. The operator shall have
33 30 days, or a longer period mutually agreed upon by the operator
34 and the lead agency, to submit a revised plan.

35 (5) The lead agency shall approve or deny approval of the
36 revised interim management plan within 60 days of receipt. If the
37 lead agency denies approval of the revised interim management
38 plan, the operator may appeal that action to the lead agency's
39 governing body, which shall schedule a public hearing within 45

days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the lead agency's governing body, a surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) Any enforcement action which may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to subdivision (b), (c), (d), or (h) or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

SEC. 15. Section 2772.7 is added to the Public Resources Code, to read:

2772.7. A lead agency, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a "Notice of Reclamation Plan Approval" with the county recorder. The notice shall read: "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the _____, a copy of which is on file with the _____."

SEC. 16. Section 2772.8 is added to the Public Resources Code, to read:

2772.8. A written acknowledgment by the owner of the fee on which the mining operation is located, and the owner of the mineral interest in the property if other than the fee owner or operator, that the owner is aware of, and approves of, any reclamation plan the operator of the mining operation on the property has proposed for, or has obtained approval of with respect of, for the property, and agrees that if the operator defaults under its reclamation obligations of that reclamation plan, the owner is subject to both of the following:

(a) The owner is responsible for completing reclamation of the property in accordance with that reclamation plan.

1 **(b)** *The owner shall allow access to the property to any*
2 *governmental agency or the agent of any company providing*
3 *financial assurances in connection with the reclamation plan, in*
4 *order that reclamation can be carried out by the entity or*
5 *company, in accordance with the reclamation plan.*

6 **SEC. 17.** *Section 2773.1 of the Public Resources Code is*
7 *amended to read:*

8 2773.1. (a) Lead agencies shall require financial assurances
9 of each surface mining operation to ensure that reclamation is
10 performed in accordance with the surface mining operation's
11 approved reclamation plan, as follows:

12 (1) Financial assurances may take the form of surety bonds
13 executed by an admitted surety insurer, as defined in subdivision
14 (a) of Section 995.120 of the Code of Civil Procedure,
15 irrevocable letters of credit, trust funds, or other forms of
16 financial assurances specified by the board pursuant to
17 subdivision (c), ~~which~~ *that* the lead agency reasonably
18 determines are adequate to perform reclamation in accordance
19 with the surface mining operation's approved reclamation plan.

20 (2) The financial assurances shall remain in effect for the
21 duration of the surface mining operation and any additional
22 period until reclamation is completed.

23 (3) The amount of financial assurances required of a surface
24 mining operation for any one year shall be adjusted annually to
25 account for new lands disturbed by surface mining operations,
26 inflation, and reclamation of lands accomplished in accordance
27 with the approved reclamation plan.

28 (4) The financial assurances shall be made payable to the lead
29 agency and the department. Financial assurances that were
30 approved by the lead agency prior to January 1, 1993, and were
31 made payable to the State Geologist shall be considered payable
32 to the department for purposes of this chapter. However, if a
33 surface mining operation has received approval of its financial
34 assurances from a public agency other than the lead agency, the
35 lead agency shall deem those financial assurances adequate for
36 purposes of this section, or shall credit them toward fulfillment of
37 the financial assurances required by this section, if they are made
38 payable to the public agency, the lead agency, and the
39 department and otherwise meet the requirements of this section.
40 In any event, if a lead agency and one or more public agencies

1 exercise jurisdiction over a surface mining operation, the total
2 amount of financial assurances required by the lead agency and
3 the public agencies for any one year shall not exceed that amount
4 which is necessary to perform reclamation of lands remaining
5 disturbed. For purposes of this paragraph, a “public agency” may
6 include a federal agency.

7 (b) ~~(1)~~ If the lead agency or the board, ~~following a public~~
8 ~~hearing,~~ determines that the operator is financially incapable of
9 performing reclamation in accordance with its approved
10 reclamation plan, or has abandoned its surface mining operation
11 without ~~commencing~~ *completing* reclamation, either the lead
12 agency or the director ~~shall do all of the following:~~

13 ~~(1) Notify the operator by personal service or certified mail~~
14 ~~that the lead agency or the director intends to take appropriate~~
15 ~~action to forfeit the financial assurances and specify the reasons~~
16 ~~for so doing.~~

17 ~~(2) Allow the operator 60 days to commence or cause the~~
18 ~~commencement of reclamation in accordance with its approved~~
19 ~~reclamation plan and require that reclamation be completed~~
20 ~~within the time limits specified in the approved reclamation plan~~
21 ~~or some other time period mutually agreed upon by the lead~~
22 ~~agency or the director and the operator.~~

23 ~~(3) Proceed to take appropriate action to require forfeiture of~~
24 ~~the financial assurances if the operator does not substantially~~
25 ~~comply with paragraph (2).~~ *may take appropriate action to*
26 *require the forfeiture of the financial assurances relating to the*
27 *reclamation of the mine operation.*

28 *(2) The forfeiture provided for in paragraph (1) shall not*
29 *occur until the mining operator has first been given 10 days*
30 *written notice, by personal service or certified mail, of the*
31 *intended forfeiture, and an opportunity to discuss his or her*
32 *financial situation and the proposed forfeiture with the lead*
33 *agency or director, as appropriate. However, the 10 day notice*
34 *period shall not be required as a condition to forfeiting these*
35 *financial assurances, if any financial assurances would*
36 *otherwise expire or cease to be effective within five days after the*
37 *10-day period.*

38 ~~(4)~~

39 (3) Use the proceeds from the forfeited financial assurances to
40 conduct and complete reclamation in accordance with the

1 approved reclamation plan. In no event shall the financial
2 assurances be used for any other purpose. The operator is
3 responsible for the costs of conducting and completing
4 reclamation in accordance with the approved reclamation plan
5 which are in excess of the proceeds from the forfeited financial
6 assurances.

7 (c) Financial assurances shall no longer be required of a
8 surface mining operation, and shall be released, upon written
9 notification by the lead agency, which shall be forwarded to the
10 operator and the director, that reclamation has been completed in
11 accordance with the approved reclamation plan. If a mining
12 operation is sold or ownership is transferred to another person,
13 the existing financial assurances shall remain in force and shall
14 not be released ~~by the lead agency until new financial assurances~~
15 ~~are secured from the new owner and have been approved by the~~
16 ~~lead agency in accordance with Section 2770 until the new owner~~
17 ~~of the mining operation assumes in writing the obligations to~~
18 ~~complete reclamation in accordance with the terms of any~~
19 ~~existing reclamation plan approved for the operation, and posts~~
20 ~~sufficient new financial assurances, pursuant to this chapter, as~~
21 ~~may be required by the lead agency. No transferee of any mining~~
22 ~~operation shall be recognized as a mine operator for the mining~~
23 ~~operation in question, until the occurrence of both these~~
24 ~~conditions.~~

25 (d) (1) The lead agency shall have primary responsibility to
26 seek forfeiture of financial assurances and to reclaim ~~mine sites~~
27 ~~under subdivision (b). However, in cases where the board is not~~
28 ~~the lead agency pursuant to Section 2774.4, the director may act~~
29 ~~to seek forfeiture of financial assurances and reclaim mine sites~~
30 ~~pursuant to subdivision (b) only if both of the following occurs:~~

31 ~~(1) The financial incapability of the operator or the~~
32 ~~abandonment of the mining operation has come to the attention~~
33 ~~of the director.~~

34 ~~(2) The lead agency has been notified in writing by the~~
35 ~~director of the financial incapability of the operator or the~~
36 ~~abandonment of the mining operation for at least 15 days, and~~
37 ~~has not taken appropriate measures to seek forfeiture of the~~
38 ~~financial assurances and reclaim the mine site; and one of the~~
39 ~~following has occurred:~~

1 ~~(A) The lead agency has been notified in writing by the~~
2 ~~director that failure to take appropriate measures to seek~~
3 ~~forfeiture of the financial assurances or to reclaim the mine site~~
4 ~~shall result in actions being taken against the lead agency under~~
5 ~~Section 2774.4.~~

6 ~~(B) The director determines that there is a violation that~~
7 ~~amounts to an imminent and substantial endangerment to the~~
8 ~~public health, safety, or to the environment.~~

9 ~~(C) The lead agency notifies the director in writing that its~~
10 ~~good faith attempts to seek forfeiture of the financial assurances~~
11 ~~have not been successful.~~

12 ~~The director shall comply with subdivision (b) in seeking~~
13 ~~forfeiture of financial assurances and reclaiming mine sites~~
14 ~~mined lands pursuant to this chapter. However, except in cases~~
15 ~~where the board is the lead agency, in which case no notice need~~
16 ~~be given, the director may not act to seek forfeiture of financial~~
17 ~~assurances and reclaim mine sites pursuant to this chapter until~~
18 ~~the director has first given notice to the lead agency that the~~
19 ~~director has determined to seek forfeiture of the financial~~
20 ~~assurances, and unless the lead agency has done so within 10~~
21 ~~days from the date of that notice. The director shall specify in~~
22 ~~that notice that he or she has determined that the mine operator~~
23 ~~is financially incapable of completing reclamation or has~~
24 ~~abandoned the mining operation.~~

25 ~~(2) The director shall not be required to give the lead agency~~
26 ~~that notice if the director determines that there is a violation of~~
27 ~~this chapter by the mining operator that amounts to an imminent~~
28 ~~and substantial danger to the public health, safety, or the~~
29 ~~environment, or, if the lead agency has notified the director that~~
30 ~~it is unable to successfully seek the forfeiture of these financial~~
31 ~~assurances.~~

32 ~~(e) The board may adopt regulations specifying financial~~
33 ~~assurance mechanisms other than surety bonds, irrevocable~~
34 ~~letters of credit, and trust funds, which the board determines are~~
35 ~~reasonably available and adequate to ensure reclamation pursuant~~
36 ~~to this chapter, but these mechanisms may not include financial~~
37 ~~tests, or surety bonds executed by one or more personal sureties.~~
38 ~~These mechanisms may include reclamation bond pool programs.~~

39 ~~(f) On or before March 1, 1993, the board shall adopt~~
40 ~~guidelines to implement this section. The guidelines are exempt~~

1 from the requirements of Chapter 3.5 (commencing with Section
2 11340) of Part 1 of Division 3 of Title 2 of the Government
3 Code, and are not subject to review by the Office of
4 Administrative Law.

5 *SEC. 18. Section 2773.2 of the Public Resources Code is*
6 *repealed.*

7 ~~2773.2. (a) The Secretary of the Resources Agency shall~~
8 ~~convene a multiagency task force that shall evaluate the~~
9 ~~effectiveness of the Cache Creek Resource Management Plan in~~
10 ~~achieving the plan's objectives concerning the rehabilitation and~~
11 ~~restoration of Cache Creek and identify those aspects of the plan~~
12 ~~that should be modified or eliminated to more effectively achieve~~
13 ~~the goals of this chapter.~~

14 ~~(b) The task force shall consist of nine members as follows:~~

15 ~~(1) A representative of the department.~~

16 ~~(2) A representative of the Department of Fish and Game.~~

17 ~~(3) A representative of the State Water Resources Control~~
18 ~~Board.~~

19 ~~(4) Six members appointed by the Secretary of the Resources~~
20 ~~Agency. Of these six members, two shall be elected officials of a~~
21 ~~city or county with active mining operations within its~~
22 ~~jurisdiction, one of whom shall represent northern California~~
23 ~~interests, and one of whom shall represent southern California~~
24 ~~interests; one shall be a person currently engaged in in-stream~~
25 ~~mining activities as an employee or owner of a mining operation;~~
26 ~~one shall be a member of the State Mining and Geology Board;~~
27 ~~and two shall be members of the scientific community who are~~
28 ~~affiliated with a California institution of higher education. The~~
29 ~~representative of the department shall serve as the chairperson of~~
30 ~~the task force.~~

31 ~~(e) The task force, not later than July 1, 2001, shall~~
32 ~~recommend to the Secretary of the Resources Agency any~~
33 ~~revisions to this chapter or any other provisions of law, including~~
34 ~~regulations of the State Mining and Geology Board, that are~~
35 ~~necessary to incorporate regional resource management plans in~~
36 ~~the state's regulation of instream mine reclamation. The task~~
37 ~~force recommendations shall, at a minimum, address all of the~~
38 ~~following issues:~~

39 ~~(1) Flood control.~~

40 ~~(2) Stream bank and channel erosion control.~~

1 ~~(3) Slope stability.~~

2 ~~(4) Vegetation and revegetation.~~

3 ~~(5) The interrelationships of private and public land ownership~~
4 ~~along and within streambed areas, including ownership rights~~
5 ~~that are or may be “vested” as the term is used in Section 2776.~~

6 ~~(6) The provision of adequate financial assurances for~~
7 ~~reclaiming mined areas.~~

8 ~~(7) The monitoring of compliance with qualitative and~~
9 ~~quantitative measures to regulate mine reclamation on large~~
10 ~~segments of streams and rivers.~~

11 ~~(8) Cumulative and site-specific issues related to resource~~
12 ~~management for instream mine reclamation.~~

13 ~~(d) The department shall only convene the multiagency task~~
14 ~~force required pursuant to subdivision (a) if the costs associated~~
15 ~~with the operation of the task force will not diminish the~~
16 ~~department’s ability to provide reclamation plan review, financial~~
17 ~~assurance review, and field inspections, undertake other~~
18 ~~enforcement actions and provide local assistance to cities or~~
19 ~~counties under this chapter.~~

20 *SEC. 19. Section 2773.2 is added to the Public Resources*
21 *Code, to read:*

22 *2773.2. The mineral owner and owner of the surface estate, if*
23 *legally entitled to do so, shall allow access to the property on*
24 *which the mining operation is located to any governmental*
25 *agency or the agent of any company providing financial*
26 *assurances in connection with the reclamation plan and*
27 *expending those financial assurances for reclamation, in order*
28 *that reclamation may be carried out by the entity or company, in*
29 *accordance with the reclamation plan.*

30 *SEC. 20. Section 2774 of the Public Resources Code is*
31 *amended to read:*

32 *2774. (a) Every lead agency shall adopt ordinances in*
33 *accordance with state policy*~~which~~ *that establish procedures for*
34 *the review and approval of reclamation plans and financial*
35 *assurances and the issuance of a permit to conduct surface*
36 *mining operations, except that any lead agency without an active*
37 *surface mining operation in its jurisdiction may defer adopting an*
38 *implementing ordinance until the filing of a permit application.*
39 *The ordinances shall establish procedures requiring at least one*
40 *public hearing and shall be periodically reviewed by the lead*

1 agency and revised, as necessary, to ensure that the ordinances
2 continue to be in accordance with state policy.

3 (b) The lead agency shall conduct an inspection of a surface
4 mining operation within six months of receipt by the lead agency
5 of the surface mining operation's report submitted pursuant to
6 Section 2207, solely to determine whether the surface mining
7 operation is in compliance with this chapter. In no event shall a
8 lead agency inspect a surface mining operation less than once in
9 any calendar year. The lead agency may cause an inspection to
10 be conducted by a state-registered geologist, state-registered civil
11 engineer, state-licensed landscape architect, or state-registered
12 forester, who is experienced in land reclamation and who has not
13 been employed by a surface mining operation within the
14 jurisdiction of the lead agency in any capacity during the
15 previous 12 months. All inspections shall be conducted using a
16 form developed by the department and approved by the board.
17 The operator shall be solely responsible for the reasonable cost of
18 the inspection. The lead agency shall notify the director within 30
19 days of the date of completion of the inspection that the
20 inspection has been conducted. The notice shall contain a
21 statement regarding the surface mining operation's compliance
22 with this chapter, shall include a copy of the completed
23 inspection form, and shall specify which aspects of the surface
24 mining operations, if any, are inconsistent with this chapter. If
25 the surface mining operation has a review of its reclamation plan,
26 financial assurances, or an interim management plan pending
27 under subdivision (b), (c), (d), or (h) of Section 2770, or an
28 appeal pending before the board or lead agency governing body
29 under subdivision (e) or (h) of Section 2770, the notice shall so
30 indicate. The lead agency shall forward to the operator a copy of
31 the notice, a copy of the completed inspection form, and any
32 supporting documentation, including, but not limited to, any
33 inspection report prepared by the geologist, civil engineer,
34 landscape architect, or forester.

35 (c) Prior to approving a surface mining operation's
36 reclamation plan, financial assurances, including existing
37 financial assurances reviewed by the lead agency pursuant to
38 subdivision (c) of Section 2770, or any amendments, the lead
39 agency shall submit the plan, assurances, or amendments to the
40 director for review. All documentation for that submission shall

be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) ~~The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised. In particular, if the lead agency's position is at variance with any of the recommendations made, or objections raised, in the director's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator submitted to it, describing the disposition of all issues raised by the director's comments, and submit the response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's comments shall describe whether the recommendations of the director are accepted by the lead agency, and if not, shall specify the reasons the lead agency declines to adopt them. The lead agency shall also give the director at least 30 days' notice of the time, place, and date of a hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the lead agency. If no~~

1 *hearing is required by this chapter or by a local ordinance or*
2 *other state law, then the lead agency shall provide 30 days notice*
3 *to the director that it intends to approve the reclamation plan,*
4 *plan amendment, or financial assurance.*

5 (3) To the extent that there is a conflict between the comments
6 of a trustee agency or a responsible agency that are based on the
7 agency's statutory or regulatory authority and the comments of
8 other commenting agencies which are received by the lead
9 agency pursuant to Division 13 (commencing with Section
10 21000) regarding a reclamation plan or plan amendments, the
11 lead agency shall consider only the comments of the trustee
12 agency or responsible agency.

13 (e) Lead agencies shall notify the director of the filing of an
14 application for a permit to conduct surface mining operations
15 within 30 days of an application being filed with the lead agency.
16 By July 1, 1991, each lead agency shall submit to the director for
17 every active or idle mining operation within its jurisdiction, a
18 copy of the mining permit required pursuant to Section 2774, and
19 any conditions or amendments to those permits. By July 1 of
20 each subsequent year, the lead agency shall submit to the director
21 for each active or idle mining operation a copy of any permit or
22 reclamation plan amendments, as applicable, or a statement that
23 there have been no changes during the previous year. Failure to
24 file with the director the information required under this section
25 shall be cause for action under Section 2774.4.

26 *SEC. 21. Section 2774.1 of the Public Resources Code is*
27 *amended to read:*

28 2774.1. (a) Except as provided in subdivision (i) of Section
29 2770, if the lead agency or the director determines, based upon
30 an annual inspection pursuant to Section 2774, or otherwise
31 confirmed by an inspection of the mining operation, that a
32 surface mining operation is not in compliance with this chapter,
33 the lead agency or the director may notify the operator of that
34 violation by personal service or certified mail. If the violation
35 extends beyond 30 days after the date of the lead agency's or the
36 director's notification, the lead agency or the director may issue
37 an order by personal service or certified mail requiring the
38 operator to comply with this chapter or, if the operator does not
39 have an approved reclamation plan or financial assurances, cease
40 all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency or director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(c) Any operator who violates or fails to comply with an order issued under subdivision (a) after the order's effective date, as provided in subdivision (b), or who fails to submit a report to the director or lead agency as required by Section 2207, shall be subject to an order by the lead agency or the director imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance with this chapter or Section 2207. The penalty may be imposed administratively by the lead agency or the director. In determining the amount of the administrative penalty, the lead agency or the director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency or the director within 30 days, unless the operator petitions the legislative body of the lead agency, the board, or the superior court for review as provided in Section 2774.2. Any order shall be served by personal service or by certified mail upon the operator. Penalties collected by the director shall be used for no purpose other than to cover the reasonable costs incurred by the director in implementing this chapter or Section 2207.

(d) If the lead agency or the director determines that the surface mine is not in compliance with this chapter, so that the surface mine presents an imminent and substantial endangerment to the public health or the environment, the lead agency or the

1 Attorney General, on behalf of the director, may seek an order
2 from a court of competent jurisdiction enjoining that operation.

3 (e) Upon a complaint by the director, the department, or the
4 board, the Attorney General may bring an action to recover
5 administrative penalties under this section, and penalties under
6 Section 2207, in any court of competent jurisdiction in this state
7 against any person violating any provision of this chapter or
8 Section 2207, or any regulation adopted pursuant to this chapter
9 or Section 2207. The Attorney General may bring such an action
10 on his or her own initiative if, after examining the complaint and
11 the evidence, he or she believes a violation has occurred. The
12 Attorney General may also seek an order from a court of
13 competent jurisdiction compelling the operator to comply with
14 this chapter and Section 2207.

15 (f) The lead agency has primary responsibility for enforcing
16 this chapter and Section 2207. ~~In cases where the board is not the~~
17 ~~lead agency pursuant to Section 2774.4, enforcement actions may~~
18 ~~be initiated by the director pursuant to this section only after the~~
19 ~~violation has come to the attention of the director and either of~~
20 ~~the following occurs:~~

21 ~~(1) The lead agency has been notified by the director in~~
22 ~~writing of the violation for at least 15 days, and has not taken~~
23 ~~appropriate enforcement action.~~

24 ~~(2) The director determines that there is a violation which~~
25 ~~amounts to an imminent and substantial endangerment to the~~
26 ~~public health or safety, or to the environment.~~

27 ~~The director shall comply with this section in initiating~~
28 ~~enforcement actions after a surface mining operator has~~
29 ~~commenced lawful activity under an approved reclamation plan.~~
30 ~~When the director, after providing the lead agency with written~~
31 ~~comments, determines that a local lead agency approved a~~
32 ~~reclamation plan, plan amendment, or financial assurance that~~
33 ~~does not comply with this division, the board's regulations, or~~
34 ~~Section 2207, the director may bring an action in the form of a~~
35 ~~writ of mandamus against the lead agency to set aside any~~
36 ~~approval of the plan, plan amendment, or financial assurance.~~
37 ~~The director may also seek to enjoin any surface mining~~
38 ~~operation from operating pursuant to the reclamation plan, plan~~
39 ~~amendment, or financial assurance, unless the plan or assurance~~
40 ~~is made to conform with this act or Section 2207, as applicable.~~

This action shall be brought by the director within 45 days of the lead agency's approval of the plan, plan amendment, or financial assurance, provided the lead agency has given the required notices provided for in subdivision (d) of Section 2774. Any action shall be brought by the director within 180 days of the lead agency's approval of the plan, plan amendment, or financial assurance, if the lead agency has failed to provide these notices.

(g) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, and include the remedy of enjoining a mining operator from operating in violation of its approved reclamation plan or outside the boundaries of its approved reclamation plan. In any enforcement action of the director under this act or Section 2207, the director need not demonstrate the absence of irreparable injury or the inadequacy of other legal remedies.

SEC. 22. Section 2775 of the Public Resources Code is amended to read:

2775. (a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency, ~~or any person who is aggrieved by the granting of a permit to conduct surface mining operations in an area of statewide or regional significance,~~ may, within 15 days of exhausting his rights to appeal in accordance with the procedures of the lead agency, appeal to the board.

(b) The board may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

(c) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the evidence ~~but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the board determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead~~

1 ~~agency shall schedule a public hearing to reconsider its action.~~

2 *The board shall determine whether the lead agency's decision is*
3 *appropriate given that the areas in question have been*
4 *determined to be of regional or statewide significance. The board*
5 *may affirm the decision of the lead agency, or may reverse the*
6 *decision of the lead agency, in whole or part, and issue a permit*
7 *to conduct surface mining operations on the property in question.*
8 *In any determination to reverse the decision of the lead agency,*
9 *notwithstanding Section 2757, the board may impose conditions*
10 *on the mining operation as it deems appropriate under the*
11 *circumstances.*

12 ~~SEC. 11.~~

13 *SEC. 23.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the
18 penalty for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition of a
20 crime within the meaning of Section 6 of Article XIII B of the
21 California Constitution.